IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 2010 of 1995

For Approval and Signature:

HON'BLE MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

LAJVANTI HIRASING SHARMA

Versus

DIGVIJAY CEMENT CO.LTD.

Appearance:

1. Civil Revision Application No. 2010 of 1995

MR AR SHAIKH for Petitioner No. 1-2

RULE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.H.KADRI

Date of decision: 12/11/2003

ORAL JUDGEMENT

1. The petitioners, by filing this Civil Revision Application under section 115 of the Code of Civil

Procedure ["the Code", hereinafter], has questioned the order dated 21st July 1995 passed by the 2nd Joint Civil Judge, Senior Division, Jamnagar below application dated 20th July 1995 filed by the petitioners praying to permit them to withdraw the amount of periodical interest on the Fixed Deposit Receipts with the Indian Bank, Jamnagar.

2. The petitioners had filed Special Civil Suit No. 221 of 1984 against the respondent -Digvijay Cement Company Limited, claiming compensation of Rs.1,34,800/for the death caused of their son, Meherchand, who died due to negligent act on the part of the respondent Company. The said suit was filed claiming compensation as stated above, under the provisions of sections 1(A) and 2 of the Indian Fatal Accidents Act, 1885. The learned Civil Judge, Senior Division, Jamnagar, who had tried the above suit, was pleased, vide his judgment and decree dated 29th October 1994, to partly allow the suit by awarding compensation of Rs.64,000/- along with interest at 15% p.a. from the date of the suit till realization. By the said decree, both the petitioners were held entitled to compensation of 50% each. Pursuant to the passing of the decree, the respondent Company deposited the amount of Rs.1,70,547/- in the trial Court, and it appears from the records that the respondent Company did not challenge the said judgment and award. After deducting the amount of court fees of Rs.3700/_, the net amount of Rs.1,66,847/_ was apportioned between the petitioners at Rs.83,423-50 each, which was ordered to be invested in separate Fixed Deposits for a period of 10 years, with the Indian Bank, K.V. Road, Jamnagar. The learned trial Judge had issued a direction to the Bank not to permit the petitioners to withdraw the amount before the maturity of the Fixed Deposit Receipts.

It, however, appears from the records that a yadi, Annexure 'B', was sent on 24th July 1995 to the Manager, Indian Bank, K.V. Road, Jamnagar that the amount of interest which was to be accrued on the said Fixed Deposit Receipts shall not be paid to the petitioners. The said direction to the Bank prohibiting payment of periodical interest is challenged by the petitioners in this Civil Revision Application.

3. This Court [Coram: H.L. Gokhale, J., as He then was], by order dated 21st December 1995, had passed the following interim order:-

"Heard Mr. Tripathi for the petitioners. None present for the respondent, though served. Rule. By way of interim arrangement, the order dated 20th July 1995 is hereby stayed. The subsequent

> letter dated 24th July, 1995 will not be acted upon hereafter to the extent that it denies interest to the petitioners. The petitioners are aged parents of a deceased employee of the respondent and the amounts due to them have been kept in a fixed deposit in pursuance of the orders passed by the lower Court. It is rather strange that they are not allowed to withdraw the interest therefrom. Hence, by way of interim arrangement, the Civil Judge (S.D), Jamnagar shall take necessary steps to fix the amount in such a way that the petitioners get six monthly interest on the deposit which had been made. Petitioners or their advocate may furnish the name of the Bank and their account number at Savai Madhupur to the lower court, whereafter the learned Judge will instruct the bank in Jamnagar to see to it that the amounts of interest are transferred to that bank periodically."

Pursuant to the above order, the petitioners are getting the amount of interest accruing on the said two Fixed Deposit Receipts.

4. In the impugned order dated 20th July 1995, the learned trial Judge had not passed an order that the petitioners shall not be entitled to receive the amount of accrued interest on the said Fixed Deposit Receipts. However, at the time of sending the yadi to the Bank, it was ordered that the amount of interest accrued on the said two Fixed Deposit Receipts shall not be paid to the petitioners. In my view, inspite of there being no order, the petitioners are not permitted to receive the amount of interest accrued on the said Fixed Deposit Receipts. The amount decreed in favour of the petitioners was never challenged by the respondent Company. The said amount admittedly belongs to the petitioners. By wrongly interpreting the order through inadvertence, the yadi was sent to the Indian Bank directing them not to pay the amount of interest accrued on the said two Fixed Deposit Receipts. By sending an incorrect yadi to the Bank, grave injustice is caused to the petitioners.

5. In view of the above facts and circumstances, this is a fit case wherein the interference of this Court is called for in the exercise of powers under section 115 of the Code. Therefore, the yadi, annexure 'B' and the direction given to the Indian Bank, K.V. Road, Jamnagar, deserves to be quashed and set aside, and is hereby quashed and set aside. This Civil Revision Application

is allowed accordingly. It is ordered that the petitioners shall be entitled to receive periodical interest accrued on the said two Fixed Deposit Receipts as directed by the aforesaid interim order of this Court dated 21st December 1995. On the maturity of the Fixed Deposits, the amount, along with interest accrued thereon, shall be paid over to each of the petitioner.

6. Rule made absolute in the above terms. No order as to costs.

[M.H. KADRI, J.]

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